



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7003 1680 0000 6167 4861

August 6, 2009

Mr. Louis Molina, Director
Mono County Health and Human Services
Environmental Health Division
P.O. Box 3329
Mammoth Lakes, California 93546

Dear Mr. Molina:

The California Environmental Protection Agency (Cal/EPA), Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the Mono County Certified Unified Program Agency (CUPA) on Tuesday, June 23 and Wednesday, 24, 2009. The evaluation was comprised of an in-office program review and field oversight inspections by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, and program recommendations.

The enclosed Evaluation Summary of Findings is now considered final and, based upon review, I find that Mono County's CUPA program performance is unsatisfactory with improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Mary Wren-Wilson every 90 days after the evaluation date; the first report is due on November 10, 2009.

Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

[Original Signed by Don Johnson]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc: Please see next page.

Mr. Louis Molina
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cc: Sent via email:

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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: Mono County

Evaluation Date: Tuesday, June 23 and Wednesday, June 24, 2009

EVALUATION TEAM

Cal/EPA: Mary Wren-Wilson and Kareem Taylor
SWRCB: Sean Farrow
DTSC: Mark Pear

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Mary Wren-Wilson at (916) 323-2204.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	<p>The CUPA has no established permit cycle. During file and data management system review, the Cal/EPA evaluator did not find any permits that were issued in fiscal year (FY) 07/08.</p> <p>The CUPA is not issuing or renewing UST operating permits to its regulated facilities. File review indicates that permits issued in 2002 and 2003 are not being renewed. Upon further review by the SWRCB evaluator, one facility permit expired in 2007 and was renewed for one year (2007 – 2008) even though it had been out of compliance since 2006.</p> <p>HSC, Chapter 6.7, Section 25284 (a)(1) (SWRCB) HSC, Chapter 6.7, Section 25285 (b) (SWRCB) CCR, Title 23, section 2712 (c)(e)(g) (SWRCB) CCR, Title 27, Section 15190 (g) Cal/EPA</p>	<p>Immediately, the CUPA shall identify the facilities with expired permits and bring them into compliance.</p> <p>By the first Progress Report due November 10, 2009, the CUPA will establish a permit issuance cycle.</p> <p>On the CUPA's first progress report, the CUPA will submit to Cal/EPA an updated permit policy and shall report the number of facilities that needed to be brought back into compliance.</p>
2	<p>The CUPA is not consistently implementing a graduated series of enforcement actions set forth in its Inspection and Enforcement (I&E) Plan. Chronic and/or severe violations are not escalated to formal enforcement.</p> <p>For example:</p>	<p>In the future, the CUPA will exercise a graduated series of enforcement on facilities that have chronic and/or severe violations.</p>

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	<ul style="list-style-type: none"> • The CUPA is not revoking UST operating permits. File review indicated that facilities with violations are allowed to operate even though warning letters have been sent to the facility requiring that the facility be brought back into compliance. • A new permit was issued for a facility (Benton Station) that has an ongoing violation. In addition RTC tracking is not being implemented on this facility. • Enforcement actions have not been elevated for facilities that have not submitted hazardous materials business plans documents after request. • During a June 15, 2005 inspection at Construction Specialty, it was determined that the firm did not properly dispose of its used oil to an oil recycler, and instead burned it as a heating fuel in violation of HSC 25250.5(a). • During a June 07, 2005 inspection at Mammoth Yosemite Airport, the facility was cited for various hazardous materials and waste violations. On March 5, 2007, approximately two years later, a follow-up letter was sent to the facility enclosed with a "Checklist Summary of Violations" requesting a Return to Compliance Certification. The facility has been recalcitrant and has yet to respond. <p>CCR, Title 27, Section 15200 (a) (7) Cal/EPA HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6; and CCR, Title 22, Section 66260.10 and Title 27, Section 15200 (a)(8)(9) DTSC HSC, Chapter 6.7, Section 25285.1 (a)(1) SWRCB</p>	<p>By the second Progress Report due February 8, 2010, the CUPA will submit to Cal/EPA documentation of two instances where a graduated series of enforcement actions were implemented.</p> <p>By the third Progress Report due May 9, 2010, the CUPA will submit to Cal/EPA documentation of all training taken to refresh staff knowledge of the definitions of Class I, Class II and minor violations. A good tool for refresher training may include covering the Cal/EPA "Violation Classification Guidance Document for Unified Program Agencies," which is available on the Cal/EPA website under Unified Program - Publications and Forms.</p>
3	<p>The CUPA is not consistently following-up and/or documenting return to compliance (RTC) for businesses cited for violations in their inspection reports and notices of violation. Of the files reviewed by Cal/EPA, 40% of the files either did not contain documentation of RTC or CUPA follow-up documentation did not contain sufficient detail to determine if all cited violations have been corrected. Below are some examples of businesses cited for violations, but documentation of RTC was either insufficient or not found:</p> <ul style="list-style-type: none"> • DWP Cain Ranch • Hot Creek Hatchery • Marine Corp Mountain Warfare Training Facility 	<p>Immediately, the CUPA will follow-up with businesses cited for violations and document RTC actions.</p> <p>On the CUPA's first Progress Report due November 10, 2009, the CUPA will submit to Cal/EPA an action plan as to how it will promote consistency in its follow-up actions.</p> <p>The CUPA shall ensure that all facilities with minor violations return to compliance by documenting this in the file by either a re-inspection report</p>

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	<ul style="list-style-type: none"> • Mammoth Firewood • The Auto Doc • Black Gold Asphalt <p>Documenting facility RTC and CUPA follow-up actions is required as part of the CUPA's implementation of its Inspection and Enforcement (I&E) plan. In addition, this information is required for the CUPA's Annual Summary Reports.</p> <p>HSC, Chapter 6.11, Section 25404.1.2 (c) CCR, Title 27, Section 15200 (a) CCR, Title 27, Section 15185 (a) and (c) Cal/EPA CCR, Title 23, Section 2712 (f) SWRCB HSC, Chapter 6.11, Section 25187.8 DTSC</p>	<p>or a return to compliance certificate. By January 01, 2010, please send an example of an RTC or re-inspection report for such a facility.</p>
4	<p>The CUPA is not collecting, retaining, and managing violation classification information in their database or in any hardcopy format. The current process used to complete the previous Annual Summary Reports involved CUPA staff searching through each facility file by hand to determine violation classifications. The CUPA is currently transitioning their data management system from Excel/Envision to Envision Connect. The CUPA plans to use the Envision Connect application to collect violation information. Envision Connect will be operational by August 2009.</p> <p>CCR, Title 27, Section 15185 (a) and (c) Cal/EPA</p>	<p>Immediately, the CUPA will begin collection, retention, and management of violation classification information.</p> <p>On the CUPA's first Progress Report due November 10, 2009, they will submit to Cal/EPA an update on the database transition process.</p>
5	<p>The CUPA did not report facilities with violations data on Annual Enforcement Summary Report 4 for FYs 06/07-07/08.</p> <p>CCR, Title 27, Section 15290 (a) (3) Cal/EPA</p>	<p>The CUPA will ensure that violation data is properly reported on the 08/09 Enforcement Summary Report # 4. The report will be submitted to Cal/EPA by September 30, 2009 and a copy shall be included with the first progress report.</p>
6	<p>The CUPA did not complete a Self Audit for FY 06/07.</p>	<p>The CUPA will ensure that a Self Audit for FY 08/09 is completed by September 30, 2009 and for each subsequent year.</p> <p>By September 30, 2009, the CUPA will submit its FY 08/09 Self Audit to Cal/EPA and a copy shall be included</p>

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	CCR, Title 27, Section 15280 (a) Cal/EPA	with the first progress report.
7	<p>The CUPA has not inspected all stationary sources subject to the CalARP program within the past three years.</p> <p>HSC, Chapter 6.95, Section 25537 (a) Cal/EPA, Cal EMA</p>	<p>With the second Progress Report due February 8, 2010, the CUPA will submit an action plan to ensure that all stationary sources will be inspected every three years.</p> <p>Additionally, by June 24, 2010, the CUPA will inspect at least one-third of the stationary sources.</p>
8	<p>The CUPA has not obtained business plans from all businesses subject to the hazardous materials business plan program.</p> <ul style="list-style-type: none"> • Agricultural handlers are not being regulated under the business plan program. The CUPA has issued business plan questionnaires to the known agricultural handlers; however, feedback has been received from less than 30% of them. • It was stated that McDonalds has reportable quantities of hazardous materials, but the CUPA is not requiring them to submit a business plan. <p>HSC, Chapter 6.95, Section 25503.5 (a) Cal/EPA, Cal EMA</p>	<p>With the second Progress Report due February 8, 2010, the CUPA will submit an action plan to either regulate agricultural handlers (under HSC Chapter 6.95, Article 1), or to individually exempt them under one of the provisions of HSC section 25503.5.</p> <p>By June 22, 2010, the CUPA will regulate all businesses subject to the hazardous materials business plan program.</p>
9	<p>The CUPA is not requiring businesses subject to the hazardous materials reporting requirements to certify that they have reviewed and, if necessary, updated the entire business plan every three years.</p> <p>HSC, Chapter 6.95, Section 25508 (c) Cal/EPA, Cal EMA</p>	<p>By the first Progress Report due November 10, 2009, the CUPA will submit an action plan to Cal/EPA that ensures that each business reviews their business plan every three years and makes the necessary changes if required.</p> <p>By June 22, 2010, the CUPA will ensure that all businesses subject to the hazardous materials reporting requirements have reviewed their business plans and updated them as needed.</p>
10	<p>The CUPA is not requiring business subject to the hazardous materials reporting requirement to annually submit their hazardous materials inventory or certification</p>	<p>With the first Progress Report due November 10, 2009, the CUPA shall submit an action plan outlining how</p>

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	<p>statement.</p> <p>HSC, Chapter 6.95, Section 25505 (c) Cal/EPA, Cal EMA</p>	<p>they will ensure that each business annually submits either the inventory certification or the inventory itself.</p> <p>The CUPA will ensure that all hazardous materials inventory or certification statements will be submitted by March 1, 2010.</p>
11	<p>The CUPA has not implemented financial management procedures that include the following:</p> <ul style="list-style-type: none"> • A single fee system in compliance with section 15210; • A fee accountability program in compliance with section 15220; and • A surcharge collection and reimbursement program in compliance with section 15250. <p>CCR, Title 27, Section 15180 (e) (5) Cal/EPA</p>	<p>With the first Progress Report due November 10, 2009, the CUPA will submit to Cal/EPA its financial management procedures that include all the required elements.</p>
12	<p>The CUPA has not met the mandated inspection frequency for underground storage tank (UST) facility compliance inspections during the 07/08 fiscal year.</p> <ul style="list-style-type: none"> • FY 07/08, the CUPA inspected 48% of their regulated UST facilities • FY 08/09, the CUPA conducted 57% of its regulated facilities. <p>HSC, Chapter 6.7, Section 25288 (a) (SWRCB)</p>	<p>By the first Progress Report due November 9, 2009, the CUPA shall inspect all of its regulated facilities. On the next progress report, indicate to the SWRCB the total number of inspections conducted to meet the mandated UST inspection frequency.</p> <p>By June 30, 2010, and each subsequent year, the CUPA will inspect every UST within its jurisdiction at least once every year.</p>
13	<p>The CUPA is not collecting all of the new UST data elements for permit renewals that came into effect in December 2007.</p>	<p>Immediately, the CUPA will start to collect the new UST data elements.</p> <p>One way to gather this information is to mail out the new UPCF Forms (A and B) during the next round of operating permit renewals.</p> <p>Prior to conducting the annual inspection, the CUPA shall review all paperwork submitted for a Permit to Operate and ensure that the tank and</p>

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	<p>HSC, Chapter 6.7, Section 25286(a); SWRCB CCR, Title 23, Section 2711(a); and CCR, Title 27, Section 15185(a)</p>	<p>pipng systems, and the monitoring methods used are sufficiently described and are appropriate for the system. If the forms are incorrect, the CUPA shall either correct the forms, or have the facility owner resubmit new forms that are correct.</p> <p>On the CUPA's first Progress Report due November 10, 2009, they will submit to Cal/EPA an update on the status of the information collection process.</p>
14	<p>The CUPA conducted an incomplete hazardous waste generator inspection on May 20, 2009. During the inspection, the following items were noted:</p> <ul style="list-style-type: none"> • The inspector failed to observe that some gas cylinders containing acetylene, oxygen, or nitrogen lay unsecured on the ground or were unchained. The potential of a sudden release from a damaged cylinder presented itself as specified under California Code of Regulations, Title 22, Section 66265.31. • The inspector inadvertently overlooked that accumulation start dates had not been posted on numerous spent fluorescent tubes as required by California Code of Regulations, Title 22, Section 66273.35, had not been labeled as required by California Code of Regulations, Title 22, Section 66273.34, and had not been stored as required by California Code of Regulations, Title 22, Section 66273.33. • The inspector failed to determine whether the facility was a large quantity generator (> 1000 kilograms in any calendar month) of hazardous waste by totaling all hazardous waste generated at the site from the facility's bills of lading and manifests. As a consequence, the inspector was unable to determine whether California Code of Regulations, Title 22, Section 66262.34 (a) was applicable. • The inspector failed to determine as a consequence whether the owner was required to keep a written tank assessment on file for the hazardous waste oil tank certified by a qualified engineer registered in California as required by CCR, Title 22, Section 66265.192. 	<p>By November 10, 2009, the inspector shall make a determination as to whether the facility for which the oversight was conducted is a large quantity generator. The CUPA inspector shall take the appropriate graduated series of enforcement and send documentation of these activities to Cal/EPA by January 1, 2010.</p>

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	<ul style="list-style-type: none"> The inspector failed to determine as a consequence whether the generator was under the 90 day accumulation rule as required by California Code of Regulations, Title 22, Section 66262.34(a). <p>CCR, Title 22, Section 66262.34(a), Section 66273.33, Section 66265.31 DTSC</p>	
15	<p>The CUPA's facility files are not indexed by street address and company name. During file review, 85% of the files were indexed by company name only.</p> <p>Additionally, the CUPA's files are not complete. File review indicates that the CUPA's files are missing inspection reports, plot plans, response plans, secondary containment inspections, etc to verify compliance.</p> <p>HSC Chapter 6.95 Section 25506(a) Cal/EPA CCR, Title 23, Section 2632 (d)(2), 2637 (e), 2638 (d), and 2711 (a)(8) CCR, Title 27, Section 15185 (a)(c)(1) SWRCB</p>	<p>With the first Progress Report due November 9, 2009, the CUPA shall submit an update on their progress towards indexing all files by business address and business name.</p> <p>Beginning immediately, the CUPA will collect and retain compliance documents for their prescribed time frames.</p> <p>(Examples of file review checklists have been given to the CUPA)</p>

CUPA Representative

Diana Shinn
(Print Name)

Original Signed
(Signature)

Evaluation Team Leader

Mary Wren-Wilson
(Print Name)

Original Signed
(Signature)

Certified Unified Program Agency (CUPA)
Evaluation Summary of Findings

PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

1. **Observation:** The CUPA's inspection reports/checklists, do not distinguish among Class I, Class II, and minor violations.

Recommendation: The CUPA should modify its inspection checklists/reports so that each violation can be classified separately to distinguish between enforcement modes for Class I, Class II and minor violations. Classification of the violations will also assist in reporting information on the Annual Enforcement Summary Reports. One reference is the June 2006 "Violation Classification Guidance for Unified Program Agencies," which is available on the Cal/EPA Unified Program Web site at <http://www.calepa.ca.gov/CUPA/Documents/Inspection/ViolationGuide.pdf>.

2. **Observation:** The CUPA has not been documenting in its inspection reports that consent has been granted by the owner/operator to enter his/her place of business to conduct an inspection.

Recommendation: It is recommended the CUPA develop an inspection report to document that consent has been granted by the owner/operator by incorporating a consent signature line on the form. Documentation of consent only serves to strengthen any potential enforcement case defeating any potential challenge that the 4th amendment may have been violated. (Inspection report writing document on CalEPA website)

3. **Observation:** The CUPA's UST Inspection form does not identify Significant Operational Compliance items or provide for a summary of these items for tracking purposes during the annual compliance inspection.

Recommendation: The SWRCB recommends that the CUPA provide a means for determining SOC compliance during the inspection.

An inspection "Draft" form has been given to the CUPA. This form is not required to be used by the CUPA. It is an example/tool to help the CUPA identify the SOC items that need to be reported to the SWRCB.

4. **Observation:** The last three annual inspection summary reports indicate the following:
- 1) 38 hazardous waste generators were identified in FY 05/06 of which 38 were inspected,
 - 2) 36 hazardous waste generators were identified in FY 06/07 of which 0 were inspected, and
 - 3) 36 hazardous waste generators were identified in FY 07/08 of which 0 were inspected.
- The CUPA has inspected all known facilities generating hazardous waste over the past three fiscal years.

Recommendation: The total number of businesses identified in FY 07/08 may be an inaccurate number. Please consult DTSC Hazardous Waste Tracking System which reflects 56 hazardous waste generators with in Mono County which have active EPA ID numbers.

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5. **Observation:** The CUPA has not submitted its latest quarterly RCRA LQG data to Cal-EPA.

Recommendation: Please submit quarterly updates to Cal-EPA even if there is nothing to report.

6. **Observation:** The inspector did not access DTSC's Hazardous Waste Tracking System on the day of the oversight inspection. This would have enabled the inspector to obtain a list of manifests which should be maintained by the facility on site for review.

Recommendation: Please begin accessing the Department's Hazardous Waste Tracking System for future generator inspections to determine waste profiles and generation status from previous manifests sent. In addition, please obtain a list of manifests and selectively compare to those manifest found on site at the facility for the past three years as required by CCR Title 22 Section 66262.40.

7. **Observation:** The CUPA is lacking the knowledge on the Red Tag enforcement procedures.

Recommendation: Contact the SWRCB on setting up training for Red Tag enforcement procedures.

8. **Observation:** The CUPA's I & E Plan explains the revocation or Modification of Permits, but the citation used from the Health and Safety Code (HSC) and California Code of Regulations (CCR) is incorrect. HSC 25280 is in reference to legislation findings and declarations. CCR 2610 is in reference to Definitions/Applicability of Definitions.

Recommendation: The SWRCB recommends that the CUPA change the HSC code to 25285.1- Revocation or Modification of Permit; Justifiable Reasons.